

***** DRAFT 8/14/06***SETTLEMENT AGREEMENT**

The Wyoming Department of Environmental Quality, Air Quality Division ("DEQ/AQD"), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and Western Region Construction LLC ("Western"), P.O. Box 813, Eden, UT 84310, enter into this Settlement Agreement ("Agreement") to fully and finally resolve without litigation DEQ Notice of Violation Docket No. 3917-06 ("NOV") alleging violations of the Wyoming Environmental Quality Act ("Act") and applicable Wyoming Air Quality Standards and Regulations ("WAQSR"). The NOV alleges that Western failed to provide notice of demolition/renovation and failed to properly handle and dispose of asbestos containing waste material during the demolition of the Mancamp located at 1960 Sunset Drive, Rock Springs ("Facility") in Sweetwater County, Wyoming.

WYO. STAT. ANN. § 35-11-901(a)(ii)(Lexis Nexis 2005) authorizes stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, Western and the DEQ/AQD hereby stipulate and agree as follows:

1. The DEQ/AQD is responsible for enforcing the Act and the WAQSR.
2. WYO. STAT. ANN. § 35-11-201 states, "No person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules, regulations and standards adopted by the council."
3. Chapter 3, § 8 of the WAQSR establishes the asbestos emission standards for demolition, renovation, manufacturing, spraying and fabricating that apply to owners and operators of facilities where asbestos renovation/demolition activities are taking place.
4. On June 1, 2006, the Asbestos Program Inspector, Mr. Robert Rodriguez received an anonymous complaint concerning the demolition of the Facility.
5. On June 5, 2006, the Asbestos Program Manager, Mr. Tony Wagner, and Mr. Robert Rodriguez inspected the Facility and found friable, and category I non-friable asbestos-containing material that had become friable during the demolition.
6. Friable and category I non-friable asbestos-containing material that has become friable are regulated asbestos-containing material ("RACM"). 3 WAQSR § 8(b)(xxxiii).
7. Chapter 3, Section 8(i)(ii)(A) of the WAQSR requires each owner or operator of a demolition or renovation activity to provide the DEQ/AQD Administrator with a written notice of the intention to demolish or renovate. Chapter 3, Section 8(i)(ii)(C)(I) requires the notice to be postmarked or delivered ten (10) working days before asbestos stripping or removal work begins. Based on a review of its records, DEQ/AQD alleges Western failed to submit the required notification to the DEQ/AQD.

8. Chapter 3, Section 8(i)(iii) requires that all RACM from a facility being demolished or renovated must be removed by the facility owner or operator before any activity begins that would disturb, dislodge, break up, or hinder access to the material for subsequent removal. The DEQ/AQD alleges that during its inspection on June 5, 2006 the DEQ/AQD inspectors discovered RACM at the Facility.

9. Chapter 3, Section 8(m)(i)(A)(III) requires all asbestos-containing waste material to be wetted and, while still wet, to be sealed in leak-tight containers. The DEQ/AQD alleges that during its inspection in June 5, 2006, the DEQ/AQD inspectors observed that asbestos-containing waste material was not adequately wet nor placed in leak-tight containers.

10. On July 17, 2006, the DEQ/AQD issued the NOV to Western for failing to comply with the Act and WAQSR by not providing notice of demolition/renovation and failing to properly handle and dispose of asbestos containing waste material during the demolition of the Facility.

11. DEQ/AQD and Western agree that the stipulated settlement amount ("Total Settlement Amount") to resolve the violations alleged in the NOV in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii) is fifteen thousand dollars and no cents (\$15,000.00) payable as follows:

A. Western agrees to pay the DEQ/AQD seven thousand five hundred dollars and no cents (\$7,500.00) as an initial settlement payment amount ("Initial Settlement Payment Amount"). Western shall pay the Initial Settlement Payment Amount within thirty (30) days after Western has been notified by DEQ/AQD that the final signature has been affixed to this Agreement.

B. Western agrees to pay the DEQ/AQD three thousand seven hundred fifty dollars and no cents (\$3,750.00) as a first installment payment amount ("First Installment Payment Amount") within ninety (90) days after Western has been notified by DEQ/AQD that the final signature has been affixed to this Agreement.

C. Western agrees to pay the DEQ/AQD three thousand seven hundred fifty dollars and no cents (\$3,750.00) as a second installment payment amount ("Second Installment Payment Amount") within one hundred eighty (180) days after Western has been notified by DEQ/AQD that the final signature has been affixed to this Agreement.

D. Western shall make all payments via check made payable to the Wyoming Department of Environmental Quality, Air Quality Division. Western shall mail all payments to Nancy Vehr, Sr. Asst. Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

12. Western, by entering into this Agreement, does not concede or admit to any liability, and this Agreement constitutes no admission of fault.

13. Full compliance with this signed Agreement shall constitute full satisfaction for all claims by the DEQ/AQD against Western based on NOV Docket No. 3917-06 and, solely in reliance on this Agreement, the DEQ/AQD will refrain from taking further enforcement action against Western for these particular violations.

14. Western waives any statute of limitations which may apply to an enforcement action by the DEQ/AQD involving the specific matters described in NOV Docket No. 3917-06 in the event that Western fails to fulfill its obligations under this Agreement.

15. This Agreement shall be admissible by either Western or DEQ/AQD (hereinafter Western and DEQ/AQD may be referred to individually as "Party" and collectively as "Parties") without objection by the other Party in any action between these Parties relating to the violations alleged herein.

16. Neither Party hereto shall have any claim against the other for attorneys' fees or other costs incurred with the allegations resolved hereby, including costs incurred in the preparation of this Agreement. Each Party shall bear its own attorney fees and costs, if any, incurred through the date this Agreement is signed by both Parties. Each party assumes the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.

17. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the Parties shall be incorporated by written instrument, executed and signed by all Parties to this Agreement.

18. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the Parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

19. This Agreement, consisting of four (4) pages represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

20. The State of Wyoming and the DEQ/AQD do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to WYO. STAT. ANN. § 1-39-104(a) and all other state law.

21. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status.

The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement, and shall inure solely to the benefit of the Parties to this Agreement. The Parties to this Agreement intend and expressly agree that only Parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

22. Each Party represents that they are authorized to enter into this Agreement and agree to be bound hereby. This Agreement shall become binding upon the Parties once executed by all Parties.

IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement:

WESTERN REGION CONSTRUCTION LLC:

By: Brian E Barnett
[insert name & title] Date 11/3/06

will pay (Attached)
in full
15,000.
chk # 3934

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY:

By: David Finley
David Finley, AQD Administrator Date 11/9/06

By: John Corra
John Corra, DEQ Director Date 11/10/06

APPROVAL AS TO FORM:

Nancy E. Vehr
Nancy E. Vehr, Sr. Asst. Attorney General
Attorney for DEQ/AQD Date 11/7/2006